IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 619 OF 2006
IN
SUIT NO. 428 OF 1987

Madhu Snap Fastners MGF. Company Pvt. Ltd.. .. Appellants.

V/s.

The Board of Trustees of the Port of Bombay. .. Respondents.

Mr.K.R.Parekh i/by M/s.K.R.Parekh & Co. for the Appellants.

Mr.U.J.Makhija i/by M/s. Mulla & Mulla & Co. for the Respondents.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 08th SEPTEMBER, 2006.

P.C.:

. Heard.

2. The original defendant is in appeal against the judgment and order dated 07th of July, 2006, whereby the learned single Judge exercised his jurisdiction under Order 8 Rule 5 (2), read with Order 8 Rule 10 of the Code of Civil Procedure and decreed the plaintiffs suit for a sum of Rs.2,50,000/- (Rupees two lakh fifty thousand). He further ordered interest on the sum of Rs.2,21,598/- (Rupees two lakh twenty-one thousand five

hundred ninety-eight) at the rate of 15% per annum from the date of the suit until realisation and costs. The suit has been decreed for want of written statement.

3. The suit was filed by the plaintiffs in the year 1987. Writ of summons was served on the defendants/ appellants in that year itself. The defendants did not file any written statement until the matter came to be decided on 7th of July, 2006. It appears that on 7th July, 2006, the counsel for the defendants prayed for some time for filing written statement. However, the learned trial Judge, relied upon the judgment of the Supreme Court in the case of **Kailash vs. Nanhku and Ors., 2005 (2) Mh.L.J. 775** and held that oral request without written application supported by affidavit cannot be entertained. We reproduce the judgment and order dated 7th July, 2006 as it is :

> "1. Heard learned counsel for the plaintiff and the defendant. The defendant has not filed the written statement for nearly 20 years. Learned counsel for the defendant orally prays for time to file written statement.
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> 2. In view of the the decision of the Supreme Court rendered in Kailash vs. Nanhku and ors. reported in 2005 (2) Mh.L.J.775 the oral request should not be entertained in the absence of facts sworn on affidavit.
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> 3. The suit is a simple money suit. In the

> absence of the written statement the averments made in the plaint are deemed to be admitted. I am therefore inclined to exercise my jurisdiction under Order 8 Rule 5(2) read with Order 8 Rule 10 of C.P.C. The suit of the plaintiff is decreed in terms of prayer clause (a).

4. In **Balraj Taneja v. Sunil Madan (AIR 1999 SC 3381),** the Supreme Court considered the provisions of Order VIII Rule 10 of the Code of Civil Procedure and held that before passing a judgment against the defendant, it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgement could possibly be passed recording the Court's satisfaction. The Supreme Court referred to the provisions contained in Order XX Rule 4(2) and section 2(9) of the Code of Civil Procedure and held that judgment should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgement.

5. The impugned judgment and order, in our view, cannot be said to meet the requirement of a judgment, as contemplated under section 2(9) and Order XX, Rule 4(2)

of the Code of Civil Procedure. As a matter of fact, the impugned judgment even does not reflect that the plaintiff led any evidence by way of an affidavit in support of its case. The facts averred in the plaint even though remained untraversed for want of written statement, needed to be proved by the plaintiff, which was not done.

6. Recently in the case of **M/s. Meditronics Corporation of India & Ors. vs. Dr.Mrs. Salima A. Rais, in the Appeal No.598 of 2006, decided by us on August 22, 2006,** we observed that though the defendants were negligent enough in not filing the written statement for many years despite reasonable opportunity having been granted to them, but since the impugned judgment does not meet the requirement of law and the matter has to be remanded back to the trial Judge, one opportunity may be given to the defendants for filing written statement so that the case could be decided on merits.

7. The inconvenience caused to the plaintiffs may be compensated by awarding reasonable cost.

8. We, accordingly, allow the Appeal and set aside the judgement and order dated 07th July, 2006 subject to

the defendants paying cost of Rs.20,000/- (Rupees Twenty thousand) to the plaintiffs within three weeks from today.

9. If the cost is not paid within three weeks, the Appeal shall be deemed to have been dismissed and the judgment and order dated 07th of July, 2006 shall hold field and the plaintiffs shall be entitled to execute the same.

10. The defendants are directed to file written statement within three weeks. The suit shall proceed thereafter.

11. Order accordingly.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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